U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-C-D-Q-

DATE: MAR. 11, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a high school Spanish teacher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). In addition, the Petitioner seeks a national interest waiver of the job offer requirement that is normally attached to this classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). This discretionary waiver allows U.S. Citizenship and Immigration Services (USCIS) to provide an exemption from the requirement of a job offer, and thus a labor certification, when doing so serves the national interest.

The Director, Texas Service Center, denied the petition. The Director concluded that the Petitioner established her eligibility as an advanced degree professional, but did not establish that a waiver of the job offer requirement is in the national interest.

The matter is now before us on appeal. In her appeal, the Petitioner asserts that her proposed work is national in scope and warrants a waiver of the job offer and labor certification requirements. She submits a brief and additional evidence.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> > (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Director determined that the Petitioner qualifies as an advanced degree professional, and that her proposed work as a high school Spanish teacher has substantial intrinsic merit. The two findings at issue in this matter are (1) whether the Petitioner established that the benefits of such work are national in scope as required under the second prong of the *NYSDOT* national interest analysis, and (2) whether she demonstrated sufficient influence on her field to meet the third prong.

At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was employed by Public Schools as the sole Spanish teacher at High School. The record indicates that she has held that position since 2008, having previously taught in Jamaica. She indicated on the Form I-140 that her intended duties include integrating the use of technology and resources to enhance learning, using tablets to drive instruction, and increasing student achievement.

In support of the Form I-140, the Petitioner provided evidence of her credentials, a personal statement detailing her qualifications and achievements, and copies of evaluations and awards that she received from her employer including certificates of excellence and achievement. In addition, she submitted testimonial letters from current and former supervisors, colleagues, students, parents, and community members. The letters attest to her dedication and effectiveness as a teacher and discuss her services beyond the classroom, such as volunteering to take on additional duties at her school and playing an active role in professional organizations. The Petitioner also submitted an article about partnership with High School entitled which discussed the Petitioner's use of tablets and software in her Spanish classes.[2]

In an introductory letter, the Petitioner claimed that USCIS "has legal and factual bases to approve teachers' National Interest Waiver applications without offending the principles enunciated in [*NYSDOT*]." She noted that Congress did not specifically define the term "in the national interest" when it created the national interest waiver. She contended that by publishing the No Child Left Behind Act of 2001 (NCLBA), Pub. L. 107-110, 115 Stat. 1425 (Jan. 8, 2002), Congress has "in effect remarkably engraved the missing definition" to include the hiring of highly qualified teachers, and has provided a "clear standard on what qualifications must be required from NIW teacher self-petitioners."

In a request for evidence (RFE), the Director requested additional documentation to establish the Petitioner's eligibility under the analysis set forth in *NYSDOT*. She was asked to submit evidence that the benefits of her proposed work are national in scope, and that she has a past record of specific prior achievement with some degree of influence on the field as a whole. In response, the Petitioner again argued that, even without meeting the requirements articulated in *NYSDOT*, highly qualified teachers may be granted national interest waivers because Congress has deemed their work to be in

[2] The Petitioner did not identify the source of the article or provide other information regarding its publication.

the national interest through its enactment of NCLBA. In the alternative, she asserted her eligibility for a waiver under the *NYSDOT* analysis. The Petitioner stated that she "plays a primary role in accomplishing [NCLBA's] goal of closing the achievement gap," and that, "[b]ecause the NCLB Act is designed to be implemented by and at all levels of the public education system – from state legislatures to the individual classroom teacher, the impact of [the Petitioner's] proven success in raising proficiency of her students transcends the classroom and imparts national level benefits."

The Petitioner's response to the RFE included information about her past and current employers, a letter in which the Petitioner described her goals in seeking a national interest waiver including her desire to contribute to the American education system, and documentation relating to various federal education laws and policies. In addition, the Petitioner provided additional testimonial letters describing her impact on her students, the school district, and the community. For instance, a letter from assistant principal of High School, stated that the Petitioner has "dramatically impacted students[']reading, writing, and speaking skills," and "has significantly helped to increase graduation rates while subsequently lowering the drop-out rate." Two of the letters also stated that the U.S. currently has a shortage of foreign language teachers.

In denying the Form I-140, the Director found that the Petitioner had not shown that the benefits of her proposed work would be national in scope as required under the second prong of the *NYSDOT* analysis, or that she has had a degree of influence "on the field of high school Spanish teaching" under the third prong.

In her brief on appeal, the Petitioner contends that she previously submitted evidence that her proposed employment is national in scope, as it relates to the "National Priority Goal of Closing the Achievement Gap." The brief does not specifically address the director's finding regarding *NYSDOT*'s third prong, stating instead that "the sole issue in the case is whether or not [the Petitioner's] proposed employment is national in scope and thus, warrants waiver of the labor certification." It states, however, that her "professional experiences as a highly qualified High School Spanish teacher in two (2) major jurisdictions, Jamaica and the United States of America are specific achievements that justify projections of future benefit to the National Interest of the nation." In a letter submitted on appeal, the Petitioner describes the benefits and importance of Spanish language education. She also maintains that she is "among the pioneers of teachers who have integrated the use of tablets in the Spanish curriculum," and that she has "impacted the nation" by sharing her strategies and methodologies "both locally and nationally." She further indicates that she has been featured on a local news channel and in a video on

As supporting evidence, she submits copies of additional evaluations and certificates of recognition and appreciation that she has received from her employer since filing the Form I-140. In addition, she provides additional letters describing her positive impact on her own students' performance and attesting to her broader influence through interactions with other educators in professional associations and professional development workshops. Finally, she submits a media article about the increasing demand for Spanish-speaking teachers.

A. National Scope

We find the Petitioner has not shown that the benefits of her proposed work are national in scope. As discussed above, she claimed that her work will further the national interest of "closing the achievement gap" and hiring highly qualified teachers, as described in the NCLBA and other federal programs. The statutes and initiatives cited by the Petitioner address the intrinsic merit of education, which the Director did not dispute, and they describe national goals. They do not, however, state or imply that the work of one teacher significantly contributes to those goals, nor has the Petitioner demonstrated that her work as an individual will further those objectives on a nationally significant level.[3] Likewise, while the Petitioner describes the benefits of Spanish language education in general, the record does not indicate that the impact of her own proposed work as a Spanish teacher would offer national benefits. This finding is consistent with *NYSDOT*, which cited a classroom teacher as an example of a meritorious occupation that would lack the requisite national scope to establish eligibility. *NYSDOT*, 22 I&N Dec. at 217, n.3.

B. Influence on the Field

The Petitioner has not demonstrated sufficient influence on her field to satisfy the third prong of the *NYSDOT* analysis. As stated above, that prong requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *NYSDOT,* 22 I&N Dec. at 219, n. 6.

In this instance, the Petitioner has submitted documentation of her work at the local level, including letters that reflect the positive impact she has had on her own students and school district. The record does not establish, however, that she has had a broader impact within her field. The Petitioner has stated that she is a "pioneer" in the use of technology in the Spanish language curriculum, and that she has shared her practices locally and nationally. However, the record does not demonstrate that the Petitioner's teaching methods have been widely adopted or have otherwise had an effect on the field of Spanish language education. While the Petitioner stated that her use of technology in the classroom has been the subject of a published article and local news report, the evidence is insufficient to support these statements or to establish that the claimed media coverage was indicative of her impact on the field as a whole. Statements made without supporting

[3] To the extent that the Petitioner contended in her initial filing and in response to the RFE that NCLBA supplanted the NYSDOT analysis in the case of national interest waiver eligibility for teachers, we reject that interpretation. The Petitioner identified no specific legislative or regulatory provisions that exempt educators from *NYSDOT* or reduce its impact on them, and she cited no support for the claim that Congress intended for the NCLBA to affect the adjudication of national interest waiver applications. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (Nov. 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. The Petitioner has not shown that the NCLBA contains a similar legislative change. As USCIS does not have discretion to ignore binding precedent under 8 C.F.R. § 103.3(c), the Petitioner's eligibility must be determined according to the analysis set forth in *NYSDOT.*

documentation are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). For these reasons, we find the record insufficient to establish that the petitioner has had some degree of influence on the field as a whole.

Regarding the submitted documentation and contentions about the demand for Spanish-language teachers in the United States, such evidence is not sufficient to establish eligibility for a national interest waiver because it relates to whether similarly-trained workers are available in the United States, an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221.

III. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has not established by a preponderance of the evidence that the benefits of her proposed work are national in scope or that she has a past record of demonstrable achievement with some degree of influence on the field as a whole. Therefore, she has not demonstrated that a waiver of the job offer requirement will be in the national interest of the United States. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of K-C-D-Q-*, ID# 16004 (AAO Mar. 11, 2016)